

REMARKS

This application has been carefully reviewed in light of the Office Action of October 11, 2005, wherein:

- A. Claims 1-66 were rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention;
- B. Claims 1-3, 22, 23, 25, 28, 29, 30, 32, 33, 34-37, 55-57, 59, 62, 62, 65, and 66 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,696,963, to Shepherd (hereinafter referred to as "Shepherd");
- C. Claims 4-14, 19, 20, 38-47, 52, and 53 were rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd in view of U.S. Patent No. 4,576,501, to McConnell (hereinafter referred to as "McConnell");
- D. Claims 15-18, and 48-51 were rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd in view of McConnell as applied to Claims 14 and 47, and further in view of U.S. Patent No. 2,909,345, to Matsuoka (hereinafter referred to as "Matsuoka");
- E. Claims 21 and 54 were rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd in view of Matsuoka;
- F. Claims 24 and 58 were rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd ; and
- G. Claims 31 and 64 were rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd in view of Matsuoka.

Claim Rejections – 35 U.S.C. §112

- A. Claims 1-66 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1

5 The Examiner stated that Claim 1 functionally recites, “an attachment.” However, the Examiner stated that Claims 7 and 22 positively recite such a limitation. The Examiner further stated that it was confusing, questioning whether or not the Applicant intended to positively claim the attachment.

10 Claim 1 has been amended to positively recite the attachment. Thus, the Applicant respectfully requests that this rejection be withdrawn.

Claim 10

15 The Examiner stated that Claim 10 cannot depend from Claim 9 since Claim 9 requires for the attachment to be a “handcuff”, then Claim 10 stated that the attachment is a strap. The Examiner further stated that this applies for any “attachment” version depending from Claim 9 that does not further limit the handcuff but instead recites an alternative to the “attachment.”

20 Claims 8 through 12 include different versions of an “attachment.” The claims have been amended to remove any dependency issues. More specifically, each of Claims 8 through 12 recites different versions of the attachment. As such, Claims 8 through 12 have been amended to depend from Claim 6 so that there are no inconsistent versions of the attachment. Thus, the Applicant respectfully requests that this rejection be
25 withdrawn.

Claims 26 and 27

30 The Examiner stated that Claims 26 and 27 were confusing because each of their preambles is directed to an enhancer. The Examiner further noted that each enhancer comprises more than one enhancer which makes no sense.

Claims 26 and 27 have been amended to remove any confusion and clarify the claims. More specifically, in Claim 26, the reference to a first and second enhancer has been deleted. Additionally, in Claim 27, additional support members are introduced to

5 replace references to multiple enhancers. Thus, the Applicant respectfully requests that this rejection be withdrawn.

Claim 34

Regarding Claim 34, the Examiner stated that, “the support member securing mechanism” lacks clear antecedent basis. The Examiner further stated that Claim 34 functionally recites “an attachment.” The Examiner further stated that Claims 40 and 56 positively recite such a limitation. The Examiner concluded by stating that it was confusing, questioning whether or not the Applicant intended to positively claim the attachment.

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Claim 1 has been amended to positively recite the attachment. Thus, the Applicant respectfully requests that this rejection be withdrawn.

Claims 60 and 61

20 The Examiner stated that Claims 60 and 61 were confusing because each of their preambles is directed to an enhancer. The Examiner further noted that each enhancer comprises more than one enhancer which makes no sense.

25 Claims 60 and 61 have been amended to remove any confusion and clarify the claims. More specifically, in Claim 60, the reference to a first and second enhancer has been deleted. Additionally, in Claim 61, additional support members are introduced to replace references to multiple enhancers. Thus, the Applicant respectfully requests that this rejection be withdrawn.

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Claim Rejections – 35 U.S.C. §102

B. Claims 1-3, 22-23, 25, 28, 29-30, 32, 33, 34-37, 55, 56-57, 59, 62-63, and 65-66 were rejected under 35 U.S.C. 102(b) as being anticipated by Shepherd.

35 The Examiner stated that Shepherd discloses a device comprising a support member (25,30), a fastener (see Fig. 3, (40)), a support member securing mechanism (12)

5 having an attachment portion (26), an attachment (see Figs. 3,10), and a telescoping tube (see col. 2 line 15+).

In other words, Shepherd discloses a “Portable Intravenous Fluid Carrier,” having a single support member, a fastener, and a single support member securing mechanism.

10 The invention disclosed by Shepherd is for attaching the carrier of intravenous fluid with a hospital bed. Although figure 10 of Shepherd depicts the invention as supporting a user’s foot, nothing in Shepherd discloses a device having a pair of support members for supporting a user’s body above a bed.

15 Shepherd is to be contrasted with the present invention, where the device is formed to support a user above the bed’s surface. As amended, the claims of the present invention include a pair of support members, with each support member having a base end and a distal end. Two fasteners are included, each connected with the distal end of a support member. Two support member securing mechanisms are included, each being 20 attachable with a support member for securing the enhancer device with a user’s bed.

An attachment is included for connecting with the fasteners. In one aspect, the attachment is an elongated strap that is connectable with both of the fasteners. The elongated strap can be used as a supporting surface to elevate a user above a bed’s 25 surface.

In another aspect, the present invention includes a second pair of support members with two additional fasteners connected with each of the second pair of support members. In this aspect, the attachment is a body sling with a plurality of attachment parts for attaching with a plurality of fasteners. The body sling is formed such that it can 30 be connected between the fasteners of both pairs of support members to effectively hold a user’s body elevated above a bed’s surface.

Because Shepherd does not disclose multiple support members as claimed in the 35 present invention, Shepherd does not disclose each of the claimed limitations of Claims

5 1-3, 22-23, 25, 28, 29-30, 32, 33, 34-37, 55, 56-57, 59, 62-63, and 65-66. Thus, the
Applicant respectfully requests that the Examiner withdraw this rejection of Claims 1-3,
22-23, 25, 28, 29-30, 32, 33, 34-37, 55, 56-57, 59, 62-63, and 65-66.

Claim Rejections – 35 U.S.C. §103

10 C. Claims 4-14, 19, 20, 38-47, 52, 53, were rejected under 35 U.S.C. 103(a) as
being unpatentable over Shepherd in view of McConnell.

The four factors relevant to determining obviousness are: 1) the scope and content
15 of the prior art; 2) the differences between the prior art and the Claims at issue; 3) the
level of ordinary skill in the art when the invention was made; and 4) secondary indicia,
such as commercial success and copying. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 86
S.Ct. 684, 694, 15 L.Ed.2d 545 (1966). In addition, an Examiner addressing obviousness
must not take a “piecemeal approach, one in which [the Examiner] takes the individual
20 elements, item by item, and tries to show us that they each exist somewhere in the prior
art. ‘That all elements of an invention may have been old (the normal situation), some old
and some new, or all new, is ... simply irrelevant.’ “ *Litton Systems*, 728 F.2d at 1443
(quoting *Environmental Designs Ltd. V. Union Oil Co. of California*, 713 F.2d 693, 698
(Fed.Cir.1983)); see also *Avia*, 853 F.2d at 1564 (“That some components of [the
25 challenged patent] exist in prior art references is not determinative. ‘[I]f the combined
teachings suggest only components of the Claimed design but not its overall appearance,
a rejection under section 103 is inappropriate.’”) (quoting *In re Cho*, 813 F.2d 378, 382
(Fed.Cir.1987)).

30 The Examiner stated that Shepherd discloses the invention substantially as
claimed. However, the Examiner stated that Shepherd is silent about the support member
securing mechanism having a stop mechanism and allowing for a support to be pivotable
therewith. The Examiner further stated that McConnell teaches support member securing
mechanism (see Figs. 5, 6, (60) having a stop mechanism and allowing for a support (14,
35 16) to be pivotable therewith. The Examiner concluded that it would have been

5 considered obvious to one of ordinary skill in the art to modify Shepherd to include the stop mechanism as taught by McConnell in order to orient the attachment device in a desired position.

10 Regarding Claims 7 and 40, the Examiner referred the Applicant to Fig. 10 of Shepherd, which discloses an attachment for supporting a user's limb.

 Regarding Claims 9, and 42, the Examiner stated that it would have been considered obvious to use a handcuff as an attachment since such a modification can prevent a prisoner who is being treated at a hospital from escaping.

15 Regarding Claims 10-12, and 43-45, the Examiner stated that it would have been considered obvious to modify Shepherd to include such limitations. Such limitations being a strap, an elongated strap, and a body sling.

20 In order to present a *prima facie* case of obviousness, the Examiner must provide (1) one or more references (2) that were available to the inventor and (3) that teach (4) a suggestion to combine or modify the references, (5) the combination or modification of which would appear to be sufficient to have made the claimed invention obvious to one of ordinary skill in the art.

25 Shepherd discloses the use of a single support member to hold an intravenous fluid carrier next to a patient while in bed. As what appears to be an afterthought, the single support member of Shepherd can also be used to support a user's limb. However, as described above, nothing in Shepherd discloses multiple support members. Because 30 the invention of Shepherd was devised to hold intravenous fluid containers next to a patient, one skilled in the art would not be motivated to modify Shepherd to include multiple support members to support a user above a bed using an elongated strap or body sling. Thus, there is clearly no suggestion or motivation to modify the device taught by Shepherd to include an elongated strap or a body sling.

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5 Therefore, because neither of the inventions of Shepherd nor McConnell (either alone or in combination) teach all of the claimed limitations in Claims 4-14, 19, 20, 38-47, 52, and 53, the Applicant believes that these Claims are in allowable condition.
10 Additionally, because Shepherd does not teach all of the claimed limitations in Claims 1 and 34, the Applicant believes that Claims 4-14, 19, 20, 38-47, 52, and 53, which depend therefrom, are also allowable. Thus, the Applicant respectfully requests that this rejection be withdrawn.

15 D. Claims 15-18, and 48-51, were rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd in view of McConnell as applied to Claims 14, and 47 above, and further in view of Matsuoka.

20 The Examiner stated that devices according to Shepherd (once modified) include the invention substantially as claimed. However, the Examiner stated that Shepherd is silent about the support being arcuate and the securing mechanism being flat. The Examiner further stated that Matsuoka teaches a support being arcuate and securing mechanism being flat (see Figs. 1, and 4). The Examiner concluded that it would have been considered obvious to one of ordinary skill in the art to further modify (once modified) Shepherd to have an arcuate shaped support member and flat securing mechanism as taught by Matsuoka in order to make the enhancer more versatile by being
25 able to position the enhancer at the center of a bed.

30 The Applicant refers the Examiner to the discussion above regarding Claims 1 and 34. Because the inventions of Shepherd and McConnell (either alone or in combination) do not teach all of the claimed limitations in Claims 1 and 34, the Applicant believes that Claims 15-18, and 48-51, which depend therefrom, are also allowable. Thus, the Applicant respectfully requests that this rejection be withdrawn.

35 E. Claims 21 and 54 were rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd in view of Matsuoka.

5 The Examiner stated that Shepherd discloses the invention substantially as
claimed. However, the Examiner stated that Shepherd is silent about the securing
mechanism being flat. The Examiner further stated that Matsuoka teaches a securing
mechanism being flat (see Fig. 4). The Examiner concluded that it would have been
considered obvious to one of ordinary skill in the art to modify the device taught by
10 Shepherd to have a flat securing mechanism as taught by Matsuoka in order to make the
enhancer more versatile by being able to position the enhancer at the center of a bed.

15 The Applicant refers the Examiner to the discussion above regarding Claims 1
and 34. Because the inventions of Shepherd and McConnell (either alone or in
combination) do not teach all of the claimed limitations in Claims 1 and 34, the Applicant
believes that Claims 21 and 54, which depend therefrom, are also allowable. Thus, the
Applicant respectfully requests that this rejection be withdrawn.

20 F. Claims 24 and 58 were rejected under 35 U.S.C. 103(a) as being unpatentable
over Shepherd.

25 The Examiner stated that Shepherd discloses the invention substantially as
claimed. However, the Examiner stated that Shepherd is silent about the attachment
comprising a handcuff. The Examiner concluded that it would have been considered
obvious to use a handcuff as an attachment since such a modification can prevent a
prisoner who is being treated at a hospital from escaping.

30 The Applicant refers the Examiner to the discussion above regarding Claims 1
and 34. Because the inventions of Shepherd and McConnell (either alone or in
combination) do not teach all of the claimed limitations in Claims 1 and 34, the Applicant
believes that Claims 24 and 58, which depend therefrom, are also allowable. Thus, the
Applicant respectfully requests that this rejection be withdrawn.

35 G. Claims 31 and 64 were rejected under 35 U.S.C. 103(a) as being unpatentable
over Shepherd in view of Matsuoka.

The Examiner stated that Shepherd discloses the invention substantially as claimed. However, the Examiner stated that Shepherd is silent about the support being arcuate. The Examiner further stated that Matsuoka teaches a support being arcuate (see Fig. 1). The Examiner concluded that it would have been considered obvious to one of ordinary skill in the art to modify Shepherd to have an arcuate shaped support member as taught by Matsuoka in order to make the enhancer more versatile by positioning an attachment closer to a patient.

The Applicant refers the Examiner to the discussion above regarding Claims 1 and 34. Because the inventions of Shepherd and McConnell (either alone or in combination) do not teach all of the claimed limitations in Claims 1 and 34, the Applicant believes that Claims 31 and 64, which depend therefrom, are also allowable. Thus, the Applicant respectfully requests that this rejection be withdrawn.

Additional Comments

The Examiner rejected Claims 1-66 in a broad sweep without addressing the limitations as set forth in several claims. For example, the present invention includes an elongated strap as an attachment for connecting between two support members. Nowhere does the cited prior art teach any reference to an elongated strap for connecting between two support members, such that the elongated strap can be used to elevate a user above a bed. Additionally, given the nature of the prior art, one skilled in the art would not be motivated to modify the prior art to include an elongated strap for elevating a user above a bed.

As another example, the present invention includes an attachment that is a body sling with a plurality of attachment parts for attaching with the fasteners of a plurality of support members, whereby utilization of the body sling allows a body of a user to be elevated above a bed's surface. Nowhere does the cited prior art teach a body sling, or any need or motivation to elevate a user's body above a bed's surface. The prior art

5 largely refers to medical devices and it is likely that the prior art teaches against using a device to elevate a user's body above a bed.

As stated above, none of the inventions of Shepherd, McConnell, and Matsuoka (either alone or in combination) teach all of the claimed limitations in Claims 1 through
10 68. Thus, the Applicant respectfully requests that all rejections be withdrawn.

5 **Concluding Remarks:**

The Applicant respectfully submits that in light of the above comments and remarks, all claims are now in allowable condition. The Applicant thus respectfully requests timely allowance of all of the pending claims.

- 10 In the event the Examiner wishes to discuss any aspect of this response, or believes that a conversation with either Applicant or Applicant's representative would be beneficial the Examiner is encouraged to contact the undersigned at the telephone number indicated below.
- 15 The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 50-2691. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed. The petition fee due
20 in connection therewith may be charged to deposit account no. 50-2691.

Respectfully submitted,

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